

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ADAM MIELKE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES, Respondent.

Case ID: 306.0012

Case Type: PA

DECISION NO. 39920

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**Appearances:**

William Franks, Jr., 5578 Huntingwood Way, Waunakee Wisconsin, appearing on behalf of Adam Mielke.

Nicole Porter, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Natural Resources.

**DECISION AND ORDER**

On March 13, 2023, Adam Mielke filed an appeal with the Wisconsin Employment Relations Commission asserting he had been suspended for three days without just cause by the State of Wisconsin Department of Natural Resources (DNR).

A telephone hearing was held on May 16, 2023, by Commission Examiner Katherine Scott. The parties submitted written closing arguments on May 26, 2023. On June 13, 2023, Examiner Scott issued a Proposed Decision and Order affirming the three-day suspension of Adam Mielke by the DNR. No objections were filed by the parties by the deadline given of June 19, 2023.

Being fully advised on the premises, the Commission makes and issues the following:

**FINDINGS OF FACT**

1. Adam Mielke (Mielke) is employed by the State of Wisconsin Department of Natural Resources (DNR), Bureau of Finance, as a senior management accountant. He had permanent status in class when he was suspended.

2. On November 15, 2022, Mielke told a DNR Bureau Director that his supervisor's poor management was causing high turnover in the Bureau of Finance.
3. DNR suspended Mielke for three days for making malicious statements about another person.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

### **CONCLUSIONS OF LAW**

1. The Wisconsin Employment Relations Commission has jurisdiction over this appeal pursuant to Wis. Stat. § 230.44 (1)(c).
2. The State of Wisconsin Department of Natural Resources had just cause within the meaning of Wis. Stat. § 230.34(1)(a), to suspend Adam Mielke for three days.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

### **ORDER**

The three-day suspension of Adam Mielke by the State of Wisconsin Department of Natural Resources is affirmed.

Issued at Madison, Wisconsin, this 10<sup>th</sup> day of July 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a State employee with permanent status in class:

may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission ... if the appeal alleges that the decision was not based on just cause.

Adam Mielke had permanent status in class at the time of his suspension and his appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that Mielke was guilty of the alleged misconduct and that the misconduct constituted just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Mielke is employed as a senior management accountant at DNR's Bureau of Finance. Mielke interviewed for a position with DNR's Fish and Wildlife Division but did not move past the interview stage. DNR Fish and Wildlife Bureau Director Pamela Biersach invited Mielke to meet with her to discuss his interview, in order to give him some feedback about his interview style. On November 15, 2022, the two met in Biersach's office, and she explained to Mielke that he needed to provide more of a nexus between his skills and the job they were hiring for.

Mielke then asked Biersach whether she had seen his personnel file, and whether that factored into her decision not to move him forward in the recruitment process. Biersach replied that she hadn't: the personnel review wouldn't occur until later in the recruitment process. Mielke then started telling Biersach that the high turnover among management accountants was due to his supervisor Gabriel Nankee's managerial style. Biersach said thank you, and the conversation ended.

Biersach said she was taken aback by Mielke's commentary about his supervisor and made a written report to Human Resources. Following an investigation, DNR suspended Mielke for three days.

Mielke has a history of inappropriate workplace communications. On October 14, 2022, he received a letter of expectation about workplace professionalism after calling a coworker a bitch, "DMV" (implying she was slow at her job) and "Smurfette," and for berating and then hanging up on a customer. On September 6, 2022, he received a one-day suspension for calling a different coworker a bitch. Finance Bureau Director Karen Van Schoonhoven testified that Mielke has received significant feedback about this and is on a performance improvement plan regarding

professional workplace communication. It is worth noting that during the May 16 hearing in this matter, Mielke had an outburst and interrupted a witness who was giving testimony.

Mielke argues that he did not break Work Rule 17 because his statement – that Nankee’s managerial style was causing high turnover – was accurate. However, the State demonstrated that the high turnover among management accountants was because accountants were either leaving voluntarily due to retirement or family changes, or because they did not make it off probation due to poor performance. Mielke presented written statements from several former employees regarding Nankee’s managerial style. However, these former employees did not testify under oath, and their statements were not notarized or otherwise signed under oath; therefore, the written statements cannot be given much weight. Further, these statements do not support the vitriol with which Mielke attacked Nankee’s management. One employee’s statement blamed Nankee for failing to train her because her assigned mentor – a different employee – wasn’t as responsive as she would have hoped. Another employee’s statement simply said Nankee called the former employee’s holiday costume “weird.” A third employee’s statement didn’t mention Nankee at all.

Even if Mielke’s statements about his supervisor were true, they were malicious in nature. Mielke’s only goal in sharing his negative impression of Nankee to another department head was to damage Nankee’s reputation. If Mielke was seriously concerned that Nankee was creating a hostile work environment, he should have reported those concerns to Human Resources, which is in a position to investigate and discipline Nankee. Mielke never testified that he had any concerns about making such a report. Mielke’s comments to Biersach were malicious, because Mielke was not attempting to fix a perceived problem, but only to damage Nankee’s reputation.

Mielke violated Work Rule 17 when he made an inaccurate and malicious statement about his supervisor Gabriel Nankee, and that violation constituted just cause for the discipline imposed. His behavior was unprofessional and harmed workplace morale. The State followed progressive discipline, following Mielke’s previous one-day suspension with this three-day suspension. There was just cause for the three-day suspension, and the suspension is therefore affirmed.

Issued at Madison, Wisconsin, this 10<sup>th</sup> day of July 2023.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman